

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

20 CR 521 (CM)

JAMES CAHILL, *et al.*,

Defendants.

Conference
(via Microsoft Teams)

New York, N.Y.
June 17, 2021
3:00 p.m.

Before:

HON. COLLEEN McMAHON,

District Judge

APPEARANCES

AUDREY STRAUSS

United States Attorney for the
Southern District of New York

BY: JUN XIANG

Assistant United States Attorney

LAURA DE OLIVEIRA

Special Assistant United States Attorney

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Attorneys for Defendant Roche
BY: GLENN H. MORAK

1 (Case called)

2 THE COURT: I apologize for the IT disaster and
3 promise you that the next time we meet it will be in courtroom
4 24A at 500 Pearl Street.

5 For the government, what are we doing?

6 MR. XIANG: Yes, your Honor. The government has made
7 additional discovery productions since our last conference, and
8 we are nearing completion of the rolling productions in the
9 case.

10 Just for the record, the materials that have been
11 produced thus far include the various video and audio
12 recordings and photographs of the meetings between the
13 confidential source and the defendants, including the meetings
14 at which the bribes were paid. The produced materials include
15 photographs of the buy money that was used, law enforcement
16 memoranda documenting those meetings, and transcripts of a
17 subset of those meetings which the government is preparing on a
18 rolling basis and producing on a rolling basis.

19 The produced materials also include the wires of the
20 three defendants that were subject to Title IIIs, that is
21 Mr. Cahill, Mr. Hill, and Mr. Gibson, as well as the wire
22 applications. The produced materials include the search
23 warrant applications in this case, as well as the physical
24 evidence that was seized pursuant to search warrants.

25 The government has also cross-produced to every

1 defendant, except Mr. Sheeran, who declined cross production,
2 cell phones seized from every other defendant. The government
3 has also produced defendant's statements where they have
4 existed, as well as returns from various third-party subpoenas,
5 including bank records and phone records.

6 From the government's perspective, your Honor, the
7 only significant item of discovery remaining is going to be the
8 consensual wire of the confidential source. The government is
9 still working on that.

10 The government is still tidying up certain search
11 warrant returns relating to a Gmail warrant and an iCloud
12 warrant. The data sets from that are still being reviewed.
13 And the government is also narrowing down, as part of its
14 responsiveness review, the subset of those cell phone materials
15 that it used to be relevant to the case. We are hoping to tidy
16 up and finish those items within the next 30 days.

17 From the government's perspective, the materials that
18 have been produced, including a production that went out last
19 night, are the materials that would be necessary for defense to
20 consider for any appropriate motions.

21 THE COURT: You said that the transcripts are not yet
22 complete?

23 MR. XIANG: Your Honor, to be clear, the government is
24 not planning to make transcripts necessarily of every single
25 meeting. There were numerous meetings in the case. I think we

1 have produced the ones that we have ordered and that we expect
2 to be incoming. As it becomes clear which defendants will
3 ultimately be going to trial, we may be ordering additional
4 transcripts and producing them in the ordinary course.

5 THE COURT: You produced all the ones that you intend
6 to produce now.

7 MR. XIANG: That's correct, your Honor.

8 THE COURT: You want 30 days to finish producing
9 everything else.

10 MR. XIANG: That's right, your Honor.

11 THE COURT: Now, the proposal that I got when we
12 couldn't see everybody was that Mr. Talkin would be speaking
13 for the group because you had a group position.

14 Is that right, Mr. Talkin?

15 MR. TALKIN: That is, your Honor.

16 THE COURT: In that case, I'll listen to you.

17 MR. TALKIN: Thank you, your Honor.

18 The defense has been going through the materials.
19 It's substantial, to say the least. We did get a lot of
20 discovery recently, last night. How we categorize it may be
21 different, but we see it as a large amount of materials. It's
22 over 5,000 pages, including some more transcripts.

23 We need approximately 90 days to continue going
24 through this before we can tell your Honor where we are on
25 motion practice. I can assure you, your Honor, I know you've

1 been very, very patient on this, I can assure you, especially
2 representing the first person on the indictment, we have been
3 going through this stuff. It's a long, grueling task, but we
4 are doing it. In 90 days I can't promise you we will be ready
5 to tell you what motions we are going to file, but we will
6 either be there or close to there.

7 THE COURT: Ninety days is the middle of September.
8 That's OK with me. I would hope that by the middle of
9 September we would have some idea of where we are going motions
10 wise. Jewish holidays will be over at the end of the day --
11 Yom Kippur will be over at the end of the day on the 16th. I
12 have a calendar that tells me when the full moon is but not
13 Sukkot.

14 Is there a date in the week of the 20th of September
15 that would work for everybody in the courthouse in the
16 courtroom?

17 MR. TALKIN: I would suggest Tuesday, the 21st,
18 without having spoken to all my counsel. But just to start the
19 process.

20 THE COURT: Jim, are we picking a jury that week?

21 THE DEPUTY CLERK: That's fine. Would the folks all
22 like to do it at the end of the day, 4:00ish, if you have other
23 commitments, or 2:00 on the 21st?

24 MR. TALKIN: 2:00 is great.

25 THE COURT: In that case, 2:00 on the 21st.

1 Time is excluded in the interests of justice. The
2 government has yet to complete the production of discovery and
3 defense counsel need additional time to review it. Then we
4 will request motions and hopefully a trial schedule in
5 September.

6 Anything else from the government that you need me to
7 pay attention to today?

8 MR. XIANG: Not from the government, your Honor.
9 Thank you.

10 THE COURT: Mr. Talkin, is there anything else from
11 the defense that you need to me to pay attention to today?

12 MR. TALKIN: Not right now. Thank you, your Honor.

13 THE COURT: Anybody else who is on the phone?

14 MR. ZISSOU: With your permission, could we pose a
15 question to the attorney for the government about the
16 outstanding discovery that was mentioned just today?

17 THE COURT: I'm happy to convey that question.

18 MR. ZISSOU: The attorney for the government mentioned
19 a consensual, I think, wiretap that was put on the phone of a
20 cooperating witness. The consent to do that was dated November
21 of 2018. Perhaps the government could give us an idea of just
22 how long that wiretap was on, months, years? It's quite a long
23 period of time and it obviously will help us figure out how
24 much more there is to go here.

25 Do we have an estimate as to how much material that

1 is?

2 MR. XIANG: Your Honor, that wiretap was on for a
3 substantial period of time.

4 THE COURT: A substantial period of time is how many
5 months?

6 MR. XIANG: If I could refer that question to Special
7 AUSA De Oliveira, who is more familiar with the inception of
8 that wire.

9 MS. DE OLIVEIRA: Good afternoon, your Honor. That
10 would be about two years.

11 THE COURT: Twenty-four months.

12 MS. DE OLIVEIRA: Correct.

13 MR. ZISSOU: That's 24 months of material that has not
14 already been disclosed in any manner. Do I have that correct?

15 MR. XIANG: Your Honor, we have not yet produced the
16 consensual wire.

17 THE COURT: You haven't produced it in any form, any
18 portion of it?

19 MR. XIANG: Not in that way, your Honor. Again, there
20 were wires of other defendants and, of course, to the extent
21 that there are communications between those folks, that would
22 have already been produced in the wires of those other
23 defendants.

24 MR. ZISSOU: Thank you, your Honor.

25 THE COURT: Did you find out what you needed to know,

1 Mr. Zissou?

2 MR. ZISSOU: Yes. I found out there is a lot more
3 material coming our way and that's what I feared.

4 THE COURT: Sounds right.

5 Anybody else have anything that they want me to
6 address?

7 THE DEPUTY CLERK: Administrative matter, Judge, for
8 me. You make the findings under the CARES Act. We have
9 waivers for about half of the defendants, but I need each
10 defendant to e-mail me the CARES Act waiver.

11 THE COURT: I was going to ask for the same thing. If
12 we could get those e-mailed in within the next 24 hours, I
13 would appreciate it.

14 THE DEPUTY CLERK: They are on the Court's website. I
15 will send out everybody a copy of it. It's the same one that
16 we had the last time.

17 THE COURT: That's great. I have no difficulty making
18 the requisite CARES Act findings for holding this conference,
19 which is, in any event, just an administrative conference.

20 Anything else that we need to do today? I'm sorry
21 it's taking so long for so little.

22 Thank you. Have a lovely summer.

23 (Adjourned)
24
25